WIPO Advisory Committee on Enforcement (ACE)

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In recent years, China's intellectual property (IP) litigation procedures have been continuously improved, significantly reducing the burden of proof on right holders and facilitating the accurate ascertainment of facts of cases and the regulation of infringement in accordance with law.

IP infringement litigation is governed both by the general rules of evidence applicable in civil proceedings and by specific rules that reflect its distinctive characteristics. The Civil Procedure Law of the People's Republic of China and other laws and relevant judicial interpretations (including the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, the Provisions of the Supreme People's Court on Evidence in Civil Proceedings, and the Provisions of the Supreme People's Court on Evidence in Civil Intellectual Property Litigation) together form a systematic body of procedural rules that comprehensively govern the collection and submission of evidence in IP litigation.

For example, **with regard to the collection of evidence**, based on the equal status of the parties, civil litigation adheres to the basic principle that "the party who asserts a claim bears the burden of proof". To establish the facts of a case more accurately, the court may, in light of the circumstances of the case, require a party to produce relevant evidence based on the party's claims, the facts to be proved, the party's possession and control of evidence, and their ability to produce evidence. Where a party is unable to collect evidence for objective reasons, it may apply to the court to investigate and collect such evidence. A party also has the right to request the court to order the opposing party in control of the evidence to produce it. In addition, to secure evidence in a timely manner, IP right holders may apply for evidence preservation prior to the commencement of proceedings or during the litigation.

With respect to the submission and determination of evidence, the court may, following the expiration of the defense period, prepare for trial by organizing an exchange of evidence and convening pre-trial conferences. During the pre-trial conferences, the court may, upon application by a party, decide to investigate and collect evidence, commission expert appraisals, require a party to produce evidence,

conduct inspections, order evidence preservation, as well as organize the exchange of evidence. Once the hearing commences, evidence must be presented in court and cross-examined by the parties. The parties may introduce new evidence at the hearing and request further investigation, appraisal, or inspection. It is particularly noted that there is no hierarchy between the standards for the sufficiency of evidence in administrative enforcement and judicial proceedings; rather, the difference lies in their respective characteristics. In particular, as litigation involves claims and defenses by both parties, the examination and assessment of evidence can be conducted with greater depth.

With regard to the handling of obstruction of evidence collection, where the court lawfully requires a party to produce evidence, and that party, without justifiable reasons, refuses to produce it, submits false evidence, destroys evidence, or otherwise renders evidence unusable, the court may presume that the opposing party's assertions concerning the matters to be proved by that evidence are established. Where a party, without justifiable reasons, refuses to cooperate with or obstructs evidence preservation, thereby rendering the preservation of evidence impossible, the court may determine that that party shall bear adverse consequences thereof. Conducts such as fabricating or destroying important evidence or obstructing the court from hearing the case may result in fines or detention depending on the severity of the circumstances; where the conduct constitutes a criminal offense, criminal liability shall be pursued in accordance with the law.

As regards the forms of evidence, legal facts certified through notarization in accordance with statutory procedures carry relatively high probative value, though not absolute probative value, and may be rebutted by contrary evidence presented by the opposing party. Meanwhile, with the rapid development of digital and information network technologies, digital evidence plays an increasingly important role in the determination of infringement. As early as 2018, the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases by Internet Courts confirmed, in the form of a judicial interpretation, the legal validity of methods for evidence fixation and preservation such as electronic signatures, trusted timestamps, hash verification, and blockchain, and established operational rules for determining the authenticity of digital evidence. At present, in the large number of IP cases tried by the Chinese courts, parties make extensive use of digital evidence, effectively improving evidentiary efficiency and reducing the cost of rights enforcement.